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Edward Fitzgerald, *Esq*; - - Appellant.

Thomas Fitzgerald, *Gent.* - - Respondent.

The Appellant's *C A S E.*

THE Appellant having at several Times from the Year 1706 till 1712 paid and advanced to the Respondent *Thomas Fitzgerald* several considerable Sums of Money, amounting in the whole to the Sum of 600 *l.* he the Respondent, for securing thereof, executed unto the Appellant one Bond or Obligation of the Penalty of 1200 *l.* conditioned for the Payment of the said 600 *l.* with Warrant of Attorney to confess Judgment for the same.

That the Appellant, after several Years Forbearance, out of Compassion for his the Respondent's low Circumstances, until he came into the Possession of a very considerable Fortune in the Year 1724, did then apply to him the Respondent for Payment of the said 600 *l.* and Interest; which the Respondent neglecting to comply with, the Appellant found himself under a Necessity of threatning to put the said Obligation in Suit for the Recovery of his said Debt; whereupon the Respondent, merely for Delay, and to stay the Appellant's Proceeding at Law against him, exhibited his Bill against the Appellant in *Easter* Term 1724 in his Majesty's High Court of Chancery in *Great Britain*, for Relief against the said Bond and Warrant of Attorney, and therein set forth several false and fictitious Suggestions, and among others, falsly suggested, that the said Bond was perfected for a Marriage Brokage, and that the same was by Agreement not to have affected him during his Life, but was to have been a Demand on his the Respondent's Executors or Administrators, with several other false and fictitious Suggestions.

Bill in the Court of Chancery of England, Easter Term 1724.

To this Bill the Appellant having put in his Answer, he particularly and at large insisted on the Payment of the said Sum of 600 *l.* and by his said Answer absolutely denied the said several Suggestions made in the said Bill concerning the Consideration of the said Bond, and the Manner of obtaining it, and swore that the said Bond was justly perfected for the Considerations herein before mentioned.

8 June, 1725. The said Cause being at Issue, several Witnesses were examined on both Sides, and the same coming on to be Heard on the Eighth Day of *June*, in the Eleventh Year of his late Majesty King *George* the First's Reign, in the Presence of Counsel learned on both Sides, before the Right Honourable the now Lord High Chancellor of *Great Britain*, and after long Debate, and on reading the several Proceedings and Proofs in the said Cause, by which the Appellant had in the cleareſt and most undeniable

undeniable Manner eſtabliſhed the Reality of the ſaid Debt ſecured by the ſaid Obligation againſt the ſeveral Suggeſtions of the ſaid Bill, which appeared to be wholly deſtitute of any Foundation whatſoever; and due Conſideration being had of what was offered, his Lordſhip was pleaſed to order and decree, that the Reſpondent's Bill ſhould ſtand abſolutely diſmiſſed, with Coſts; as in and by the ſaid Bill, Anſwer, Proofs, and decretal Order of Diſmiſſion, remaining as of Record in the ſaid High Court of Chancery in *Great Britain*, may more fully and at large appear.

The Reſpondent, far from attempting to controvert the Juſtice of that Decree, either by petitioning for a Re-hearing, or by appealing againſt ſuch Decree, ſuffered the ſame to be duly enrolled; but to elude the Force thereof, and to avoid making any Satisfaction to the Appellant for his ſaid Debt and Coſts of Court, the Reſpondent immediately withdrew into *Ireland*, where the Appellant with great Difficulty three Years afterwards procured the Reſpondent to be arreſted for the Debt due on the ſaid Bond.

26 Nov. 1728. New Bill filed in the Court of Exchequer in Ireland.

Whereupon the Reſpondent cauſed a Bill to be filed againſt the Appellant in the Chancery Side of his Majeſty's Court of Exchequer in *Ireland*, on the 26th of *November* 1728, merely for further Delay, and for the ſame Relief and Matter, and upon the very ſame Allegations with thoſe already ſet forth in the Bill ſo diſmiſſed in the High Court of Chancery in *Great Britain*, and no other, ſave only a Colluſion which he charged between the Appellant and his the Reſpondent's Agent, and that he the Reſpondent was not in *London* when the ſaid Cauſe was heard in the ſaid High Court of Chancery.

The Appellant then and now living in *London*, could not plead or anſwer within the uſual Time, and being for it to pray a *Dedimus* to put in his Anſwer, the Reſpondent obtained an Injunction of Courſe.

Plea, 28 April 1730.

To this Bill the Appellant on the 28th of *April* 1730 filed his Plea, and pleaded at large the ſaid Bill, Anſwer, Proceedings, and Decree of Diſmiſſion inrolled, in Bar of ſo much of the ſaid Bill as ſought to draw in Queſtion again the ſame Matters which he had before ſet forth in his former Bill, with the proper Averments of the Identity of the Perſons, the Bond, and other particular Things mentioned in the Decree of Diſmiſſion, with thoſe ſpecified in the Bill and Plea, and by his Anſwer denied the fictitious Charge of Colluſion or Combination with the Reſpondent's Agent in *England*, or that the Reſpondent was not in *London* at the Time the ſaid Cauſe was heard, which were the only new Matters in the ſaid Bill ſuggeſted or mentioned which had not been inſiſted upon and put in Iſſue in the former Cauſe in *England:* And the ſaid Plea on

23 June, 1730. the Plea argued.

the 23d of *June* 1730 coming to be argued in the ſaid Court of Exchequer in *Ireland*, the Court did not think proper to allow the ſaid Plea, and diſſolve the ſaid Injunction obtained by the Reſpondent, as herein before ſet forth, as the Appellant is adviſed they ought to have done; but were only pleaſed to order, that the Benefit of the ſaid Plea ſhould be reſerved until the Hearing the ſaid Cauſe.

From

From which Order the Appellant hath appealed to your Lordſhips, and humbly conceives he is greatly aggrieved thereby, and that the ſame is Erroneous, and ought to be Reverſed, and that the Appellant's Plea ought to be allowed, with Coſts, and the ſaid Injunction diſſolved, for the following, among many other REASONS:

I. For that the ſaid Court of Exchequer had no ſort of Right to examine into the Juſtice of the Decree pronounced by the High Court of Chancery of *Great Britain* in the former Cauſe, and therefore ought not to have let the Reſpondent into a freſh Enquiry touching any Thing which had there received a final Determination; but to have allowed the Appellant's Plea as an abſolute Bar to ſo much of the new Bill as ſought to draw the ſame Matter in Queſtion a ſecond Time.

II. For that as the Reſpondent has had the Merits of his pretended Equity already tried in a Court that had certainly full Juriſdiction, and found againſt him, it would be a moſt unreaſonable Delay of Juſtice to the Appellant to make him wait for it till the ſame Merits ſhall be tried over again in the preſent Cauſe.

III. And it is moſt humbly apprehended, that as this is the firſt Inſtance where any Court of Judicature in a dependent Dominion ever claimed or pretended to a Juriſdiction of this kind, ſo it might become a Precedent of the moſt dangerous Conſequence to all ſuch Suitors as ſhould be under the unhappy Neceſſity of following thither the Perſons of their Creditors out of this Kingdom to come at Juſtice, as the Appellant hath been obliged to do in the preſent Caſe, after a moſt expenſive Suit.

WHEREFORE the Appellant humbly hopes, the ſaid Plea ſhall be allowed, with Coſts, and the ſaid Injunction ſhall be diſſolved; or that your Lordſhips will make ſuch further Order for the Appellant's Relief, as to your Lordſhips, in your great Wiſdom, ſhall ſeem meet.

D. RYDER.

EDM. MALONE.

Edward Fitzgerald, *Esq*; Appellant.
Thomas Fitzgerald, *Gent.* Respondt.

The Appellant's *CASE.*

To be Heard at the Bar of the House of LORDS *on* Friday *the 23d of* April, 1731.

No Counsel appearing for the Respondt. and the Appellt's Counsel being heard the Order of the Lord Chancellor in Ireland was Reversed the Appellt. is Plaintiff and the Injunction obtained by the Respondt. Dissolved.